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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/659,983	09/12/2000	Robert Hans Meloen	4518US	6015

24247 7590 03/26/2002  
TRASK BRITT  
P.O. BOX 2550  
SALT LAKE CITY, UT 84110

EXAMINER
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DEBERRY, REGINA M

ART UNIT	PAPER NUMBER
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1647  
DATE MAILED: 03/26/2002

25

Please find below and/or attached an Office communication concerning this application or proceeding.

<b><i>Office Action Summary</i></b>	<b>Application No.</b> 09/659,983	<b>Applicant(s)</b> MELOEN ET AL.
	<b>Examiner</b> Regina M. DeBerry	<b>Art Unit</b> 1647

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 20 February 2002.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-54 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) \_\_\_\_\_ is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) 1-54 are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.

    If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) . . . . .

4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: . . . . .

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-5, 10-12, 15, 20, 21, 26-28, 34-36, 51, 52, drawn to a peptide and vaccine classified in class 530, subclass 350.
  - II. Claims 1, 6-9 and 29-33, 37-39, drawn to peptide dimer and vaccine, classified in class 530, subclass 387.3.
  - III. Claims 13, 14, 16, 17, 24, 25, 40, 41, 44, 45, drawn to method of treatment or vaccination, classified in class 424, subclass 184.1.
  - IV. Claims 18, 42 and 43, drawn to method to immunocastrate a pig, classified in class 514, subclass 2.
  - V. Claims 19, 46-50, drawn to antibodies, classified in class 530, subclass 389.1.
  - VI. Claims 22, 23, 53, 54, drawn to use of a peptide, classified in class 514, subclass 2.

Although there are no provisions under the section for "Relationship of Inventions" in M.P.E.P. §806.05 for inventive groups that are directed to different methods, restriction is deemed to be proper because these methods appear to constitute patentably distinct inventions for the following reasons: Groups III, IV, and VI are directed to methods that recite structurally and functionally distinct elements, are not required one for the other, and/or achieve different goals. Invention III requires a method of treatment or vaccination, which is not required by any of the other groups.

Invention IV requires immunocastration of a pig, which is not required by any of the other groups. Invention VI is drawn to the use of a peptide, which is not required by any of the other groups. Therefore, a search and examination of all methods in one patent application would result in an undue burden, since the searches for the methods are not co-extensive, the classification is different, and the subject matter is divergent.

Although there are no provisions under the section for "Relationship of Inventions" in M.P.E.P. §806.06 for inventive groups that are directed to different products, restriction is deemed to be proper because these products constitute patentably distinct inventions for the following reasons: Groups I, II and V are directed to products that are distinct both physically and functionally, are not required one for the other, and are therefore patentably distinct. The protein of Groups I and II can be used in materially different methods other than to make the antibody of Group V, such as in therapeutic or diagnostic methods (e.g., in screening).

Inventions I and II/IV, II and IV, III and V, IV and V/VI, V and VI are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable of use together.

Inventions I and III/VI, II and III/VI are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially

different process of using that product (MPEP § 806.05(h)). In the instant case, the peptides of Groups I and II can used in processes to isolated binding proteins.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, separate search requirements, and/or recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Regina M. DeBerry whose telephone number is (703) 305-6915. The examiner can normally be reached on Mondays-Fridays 8:00 a.m. - 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on (703) 308-4623. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7939 for regular communications and (703) 308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

*Gary L. Kunz*  
GARY L. KUNZ  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600

*RMD*  
RMD

March 21, 2002